

F-8177

Identifier: Byung Eun YOO

REMARKS

Claims 1 and 2 are pending and the Examiner has rejected the claims under 35 U.S.C. § 103(a) as being unpatentable over Morris (USPN 3,075,526) as modified by Felix et al (USPN 4,941,872), where the Examiner asserts that Morris teaches an air pump and a nozzle through which liquid is injected directly into the interior of the large intestine through the anus. The Examiner acknowledges that Morris fails to teach a nozzle injection part connected to a connecting member of the liquid supply body and asserts that Felix teaches such limitations. The Examiner further acknowledges that the cited references fail to teach the nozzle injection part connected to a connecting member of the supply body in a spiral manner or the air pump mounted to a lower side of the supply body or a nozzle having a plurality of holes arranged in a radial direction at a front end of the nozzle. Regarding each of these limitations, the Examiner asserts without support that the features are design choices, well within the skill of the ordinary artisan, and obtainable through routine experimentation.

Applicant traverses the rejections as follows.

Turning to the unsupported rejection of the claims, a rejection based upon an obvious design choice is only applicable to ornamentation which has no mechanical function and, therefore, cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 U.S.P.Q. 431 (C.C.P.A. 1947); *In re Dembiczak*, 175 F.3d 994, 50 U.S.P.Q.2d 1614 (Fed. Cir.

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1999). A spiral connector for connecting a nozzle to a body, the placement of an air pump, and holes in a nozzle that supply fluids exterior to the nozzle each have clearly defined functions. The Examiner's own statement acknowledges the functional aspect of these elements by asserting that the configuration is obtainable through experimentation. Accordingly, it is improper to assert that the recitation of these element is an obvious design choice.

A rejection based on what is obtainable through routine experimentation is only appropriate where an optimal subgroup is selected from a generic group disclosed in the prior art reference. *In re Aller*, 220 F.2d 454, 456, 105 U.S.P.Q. 223, 235 (C.C.P.A. 1955) (selecting an optimal temperature range within a disclosed working range was not patentable). Here, the rejected laminations are not subgroups of disclosed group and, on the contrary, the Examiner has acknowledged that the rejected limitations are not taught in the prior art. Accordingly, the rejection is improper.

Furthermore, a rejection based upon features that are within the ordinary skill in the art is only proper where the underlying facts are so well-known as to be capable of instant and unquestionable demonstration as to defy dispute. *In re Alhert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418 (CCPA 1970). However, the Examiner has provided no evidence supporting a conclusion that the configuration of a portable irrigator is so well-known as to be capable of instant and unquestionable

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demonstration as to defy dispute. Accordingly, a rejection of the claims based on what is within the ordinary skill is improper.

Turning to the rejection of the claims in view of Morris, the reference teaches a bag 4 (Fig. 1) or a faucet connector 6 (Fig. 2) connected by a hose 5 to a nozzle 2 in a cup 1. The reference also teaches suspenders 11a and 11b which enable the cup to be suspended at the seat of a user (see Fig. 3). The cup 1 is intended to make a water-tight seal with the body of a user (col. 2, ln. 38) and the nozzle 2 is intended to be placed "immediately adjacent [to and point] in the direction of the anus of a wearer" (col. 1, ln. 45) so as to "clean the anus and surrounding region of the body" (col. 2, ln. 22).

Based on the specific teachings of the reference, the Examiner is incorrect in asserting that the Morris teaches an air pump or a nozzle through which liquid is injected directly into the interior of the large intestine via the anus as recited in the pending claims. Accordingly, the references fail to teach each limitation in the claims and the claims are patentable thereover. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974) (a prima face case of obviousness is established only where the combination of cited references teaches or suggests each limitation in the claim).

As the Examiner's unsupported rejections are improper and supported rejections are based upon an incorrect reading of the art, Applicant asserts that the claims, as currently written, are patentable over the cited art. However Applicant

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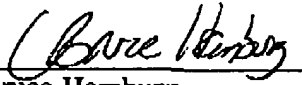
has amended the claims for clarity and added new claims to further define the scope of the invention.

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

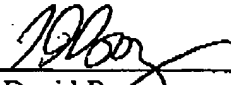
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